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TESTIMONY OF
CHARLENE R. GAITHER
MANAGER
EASTERN PANHANDLE COMMUNITY FEDERAL CREDIT UNION
ON BEHALF OF
CREDIT UNION NATIONAL ASSOCIATION (CUNA)
ON
H.R. 3951, "The Financial Services Regulatory Relief Act of 2002"

APRIL 25, 2002

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Chairman Bachus, ranking member Waters, and members of the Subcommittee, especially my own Member, Representative Capito, thank you for the opportunity to provided comments on H.R. 3951 and your efforts to design legislation to lessen the regulatory burden on insured depository institutions and improve productivity. I am Charlene Gaither, Manager of the Eastern Panhandle Community Federal Credit Union, a $17 million credit union in Martinsburg, West Virgina. I appear before you today on behalf of the Credit Union National Association (CUNA). CUNA represents over 90 percent of the nation's approximately 10,250 state and federally chartered credit unions and 82 million credit union members.

We congratulate Representative Capito for introducing this bill and including the legitimate needs of credit unions for regulatory relief. This is especially gratifying, since the last two regulatory relief bills that Congress passed did not include provisions specific to credit unions. Some might suggest that the Credit Union Membership Access Act was the credit union version of regulatory relief. While that law did provide relief from an onerous Supreme Court decision, it also imposed several new, stringent regulations on credit unions, which, in spite of assertions to the contrary, are the most stringently regulated of insured financial institutions.

I would like to emphasize that my testimony today will focus on the provisions in the bill which pertain to credit unions, as well as those we would like the committee to include in any final bill. Nearly all of these items are consistent with CUNA's Renaissance Vision Statements, the result of 18 months of input from credit unions around the country, in an effort to ensure credit unions have the tools available to meet their members' needs in the 21st century.

CUNA will not attack provisions in the bill pertaining to banks or thrifts, although the trade associations representing them seem to spend more time criticizing credit union provisions than focusing on their own. We do reserve the right, however, to point out fallacies in their arguments and point out where they may indeed have certain advantages that outweigh those of others.

Provisions in H.R. 3951

As mentioned above, CUNA is very pleased with the provisions included in H.R. 3951 pertaining to credit unions. We believe that these provisions will provide significant help for many credit unions in improving service to their members. In addition, although we understand the Committee's desire to avoid what it deems as controversial issues, we look forward to the time when we can revisit several provisions of the Federal Credit Union Act which have imposed arbitrary and unnecessary limits on credit unions, such as the cap on member business lending, certain prompt corrective action issues, and a limited number of field of membership restrictions.

The following discussion presents our views on the credit union provisions included in H.R. 3951:

Sec. 301. Privately insured credit unions authorized to become members of a Federal Home Loan Bank

CUNA strongly supports this provision, originally introduced as H.R. 2796, the Federal Home Loan Bank Membership Access of 2001, by Rep. Bob Ney. This is a bi-partisan bill that is co-sponsored by Chairman Oxley and Rep. Tubbs Jones. As incorporated into H.R. 3951, this provision would provide a needed funding source for home ownership for many credit union members, as well as strengthen the dual chartering system of credit unions.

This amendment would permit privately insured credit unions to become members of a Federal Home Loan Bank. Currently, such credit unions are excluded from FHLBank membership. The FHLBanks offer a number of products and services to financial institutions which should be available to privately insured credit unions. There is no compelling public policy reason to exclude them. According to the private insurer, presently there are only 216 privately insured credit unions in 7 states. These institutions are regulated by the states in which they were chartered. They are subject to safety and soundness requirements from the state regulator, as well as the private insurer. These requirements are similar in scope and nature to those faced by other financial institutions. Membership in a FHLBank would benefit privately insured credit unions and their members and could enhance the ability of such credit unions to broaden key programs, such as reaching out to low-income groups.

Contrary to some assertions, the beneficiary of this provision would not be a specific company, rather it would be the 1.3 million credit union members belonging to privately insured credit unions. The membership of these credit unions comprises people from all walks of life, such as fire fighters, postal workers, teachers, healthcare and agriculture workers. Under current law, these credit unions cannot access the Federal Home Loan Bank System in order to provide mortgage funding for their members. This provision would do nothing more than permit these institutions to apply to join the FHLB System and provide a new source of housing funds for these credit unions and their members.

It is critical to include this provision in H.R. 3951 in order to advance home ownership options for these credit union members. It also is important to remember that this bill provides no special treatment for these institutions. Before joining the FHLB System, any institution covered by this provision would have to be subject to approval by the appropriate Federal Home Loan Bank. Advances from the Bank System would be on the same terms as any other similar institution. This would ensure that there would be no safety and soundness concerns.

Sec. 302. Leases of land on federal facilities for credit unions

This provision would permit military and civilian authorities responsible for buildings on federal property the discretion to extend to credit unions that finance the construction of credit union facilities on federal land real estate leases at minimal charge. Credit unions provide important financial benefits to military and civilian personnel, including those who live or work on federal property. This amendment would authorize an affected credit union, with the approval of the appropriate authorities, to structure lease arrangements to enable the credit union to channel more funds into lending programs and favorable savings rates for its members.

Sec. 303. Investments in securities by federal credit unions

The Federal Credit Union Act limits the investment authority of federal credit unions to loans, government securities, deposits in other financial institutions, and certain other limited investments. The limitation is anachronistic and curtails the ability of a credit union to respond to the needs of its members. The amendment provides additional investment authority to purchase for the credit union's own account certain investment securities. The total amount of the investment securities of any one obligor or maker could not exceed 10 percent of the credit union's unimpaired capital and surplus. The NCUA Board would have the authority to define appropriate investments under this provision, thus ensuring that new investment vehicles would meet high standards of safety and soundness and be consistent with credit union activities.

Sec. 304. Increase of general 12-year limitation of term of federal credit union loans to 15 years.

Federal credit unions are authorized to make loans to members, to other credit unions, and to credit union organizations. The Federal Credit Union Act imposes various restrictions on these authorities, including a 12-year maturity that is subject to limited exceptions. The amendment would allow loan maturities up to 15 years, or longer terms as permitted by the National Credit Union Administration Board.

As a Federal credit union, my institution must comply with this limitation. We are very concerned that members seeking to purchase certain consumer items, such as a mobile home, may seek financing elsewhere in which they could repay the loan over a longer period of time than 12 years. While we would prefer for NCUA to have authority to determine the maturity on loans, consistent with safety and soundness, a 15-year maturity is preferable to the current limit. Such an increase in the loan limit would help lower monthly payments for credit union borrowers and benefit credit unions as well as their members.

Sec. 305. Increase in 1 percent investment limit in credit unions services organizations

The Federal Credit Union Act authorizes federal credit unions to invest in organizations providing services to credit unions and credit union members. An individual federal credit union, however, may invest in aggregate no more than 1% of its shares and undivided earnings in these organizations, commonly known as credit union service organizations or CUSOs. The amendment raises the limit to 3% percent.

CUSOs provide a range of services to credit unions and allow them to offer products to their members that they might not otherwise be able to do, such as check clearing, financial planning and retirement planning. Utilizing services provided through a CUSO reduces risk to a credit union and allows it to take advantage of economies of scale and other efficiencies that help contain costs to the credit union's members. Further, as federal credit union participation in CUSOs is fully regulated by NCUA, the agency has access to the books and records of the CUSO in addition to its extensive supervisory role over credit unions.

The current limit on CUSO investments by federal credit unions is out-dated and limits the ability of credit unions to participate with these organizations to meet the range of members' needs for financial services. It requires credit unions to arbitrarily forego certain activities which would benefit members or use outside vendors in which the credit union has no institutional stake. While we feel the 1% limit should be eliminated or set by NCUA through the regulatory process,

we appreciate that the increase to 3% will provide credit unions more options to investment in CUSOs to enhance their ability to serve their members.

Sec. 306. Member business loan exclusion for loans to non-profit religious organizations

We also want to commend Rep. Capito for including in the bill legislation previously introduced by Rep. Royce, H.R. 760, the Faith-Based Lending Protection Act. This amendment is designed to exclude loans made by federal credit unions to non-profit religious organizations from the statutory member business loan limit, which is 12.25% of the credit union's total assets. This amendment would offer some relief in this area by allowing federal credit unions to make member business loans to religious-based organizations without concern about the statutory limit that now covers such loans. While the limit would be eliminated, such loans would still be subject to other regulatory requirements, such as those relating to safety and soundness.

The American Bankers Association and others assert that this provision would be an end-run around congressional intent and is the beginning of a campaign to whittle away those limits in small bites. Nothing could be further from the truth. While it is true that CUNA is in favor of repealing the caps on member business loans, which we will leave for another day, it is patently untrue that this provision is designed as a way to begin that process. In fact, we believe that this is really a technical amendment designed to correct an oversight during passage of the Credit Union Membership Access Act. There was even an attempt to accomplish this on the Senate floor during the debate over the bill, but because of Constitutional questions, which have since been cleared up, the amendment was withdrawn. The law currently provides exceptions to the member business loan caps for credit unions with a history of primarily making such loans. Congress simply overlooked other credit unions that purchase parts of these loans, or participate in them. This provision would clarify that oversight and ensure that these organizations can continue meeting the needs of their members and the greater community at large.

Sec. 307. Allow federal credit unions to cash and sell certain checks to persons in the field of membership of the credit union

Federal credit unions are currently authorized to provide check cashing services to members and have limited authority to provide wire transfer services to individuals in the field of membership under certain conditions. The amendment would allow federal credit unions to provide check cashing services to anyone eligible to become a member.

This amendment is fully consistent with President Bush's initiatives to reach out to other underserved communities in this country, such as some Hispanic neighborhoods. Many of these individuals live from pay check to pay check and do not have established accounts, for a variety of reasons, including the fact that they do not have extra money to keep on deposit. We have had members join one day, deposit their necessary share balance and come in the very next day and withdraw because they need the money. This is not mismanagement on their part. They just do not have another source of funds. If we are able to cash checks and sell negotiable checks such as travelers checks, we could accomplish two things: save our staff time and effort opening new accounts for short term cash purposes which are soon closed and gain the loyalty and respect of the potential member so that when they are financially capable of establishing an account, they will look to the credit union, which will also provide financial education and other support services.

Sec. 308. Voluntary mergers and conversions involving multiple common bond credit unions without numerical limitations

In voluntary mergers of multiple bond credit unions, NCUA has determined that the Federal Credit Union Act requires it to consider whether any employee group of over 3,000 in the merging credit union could sustain a separate credit union. This provision is unreasoanble and arbitrarily limits the ability of two healthy multiple common bond federal credit unions from honing their financial resources to serve their members better.

The amendment is a big step forward in facilitating voluntary mergers, as other financial institutions are permitted to do. It provides that the numerical limitation does not apply in voluntary mergers.

The amendment also allows a multiple common bond credit union converting to or merging with a community charter credit union to retain all groups in its membership field prior to the conversion or merger. Currently, when a multiple group credit union converts to or merges with a community charter, a limited number of groups previously served may be outside of the boundaries set for the community credit union. Thus, new members within those groups would be ineligible for service from that credit union. The amendment would allow the new or continuing community credit union to provide service to all members of groups previously served.

Provisions CUNA Proposes for Inclusion in H.R. 3951

During the course of drafting H.R. 3951, CUNA staff had several conversations with the Committee staff regarding a number of proposals that were apparently not included in the bill for reasons of maintaining a "balance" between various industries. It is our understanding that once the bill was introduced, however, that it would be subject to change and that members would be open to possible additions.

The following requests, with one exception, were provisions which did not appear to present any substantive problems with the Committee staff and which we propose be included in the final version of this bill. And nearly all of them address some of the worst examples of statutory micromanagement that have placed unreasonable constraints on the ability of credit unions and their boards to function efficiently and in the best interests of their members:

1. Permits credit unions to expel members for just cause without requiring extraordinary measures.

Amend 12 USC 1764(b) in the following manner (new language is in bold italics.)

(b) The board of directors of a Federal credit union may, by majority vote of a quorum of directors, adopt and enforce a policy with respect to expulsion from membership ***based on just cause, including disruption of credit union operations,*** and nonparticipation by a member in the affairs of the credit union. ~~In establishing its policy, the board should consider a member's failure to vote in annual credit union elections or failure to purchase shares from, obtain a loan from, or lend to the Federal credit union.~~ If such a policy is adopted, written notice of the policy as adopted and the effective date of such policy shall be ~~mailed~~ ***provided*** to each member of the credit union ~~at the member's current addressing appearing on the records of the credit union.~~ not less than 30 days prior to the effective date of such policy…

Explanation

Section 12 USC 1764 of the Federal Credit Union Act currently permits a member to be expelled by a two-thirds vote of the membership present at a special meeting. It also allows the credit union's board to expel a member for nonparticpation.

This amendment will allow federal credit union boards some supplementary flexibility to address situations in which a member is disruptive to the operations of the credit union, including harassing credit union personnel and creating safety concerns for the credit union. While these instances are relatively rare, a federal credit union has little latitude to address such situations efficiently and in a timely manner under the current language of the Act.

There has been more than one occasion when we would have liked to have had the ability to expel a member for just cause. I can remember one occasion when one member actually told one of my tellers he would punch her if he ever saw her out in public. Most cases are not quite that extreme; however, we have had our share of unruly members who seem to enjoy causing a ruckus.

The Act also currently requires notice to members regarding the credit union's expulsion policy. The amendment would allow a federal credit union to provide such notice by any reasonable means designed in good faith to ensure delivery, such as through the mail, by electronic delivery, or at the credit union's annual meeting.

2. Permits directors or members of supervisory committees to obtain loans of up to $50,000 without board approval.

Amend 12 USC 1757(5)(A)(iv) in the following manner (new language is in bold italics.)

A loan or aggregate of loans to a director or member of the supervisory or credit committee of the credit union making the loan which exceeds ~~$20,000~~. ***$50,000*** plus pledged shares, be approved by the board of directors….

Explanation

The Federal Credit Union Act requires the board of a federal credit union to approve a loan or aggregate of loans for a member of the credit union's board, supervisory committee or credit committee when the amount exceeds $20,000. This threshold is very low (for example, a moderately priced new car would often exceed this amount). The threshold should be raised so that credit union boards of directors will not have to continue to devote significant resources to review such loans. A reasonable increase of this very low threshold will not raise supervisory issues, as the loan file will be subject to examiner review.

3. Permits credit unions to reimburse board volunteers for reasonable expenses.

Amend 12 USC 1761(c) in the following manner (new language is in bold italics.)

No member of the board or of any other committee shall, as such, be compensated, except that reasonable health, accident, similar insurance protection, and other reimbursement of reasonable expenses, ***including lost wages,*** incurred in the execution of the duties of the position shall not be considered compensation.

Explanation

Credit unions are directed and operated by committed volunteers. Given the pressures of today's economy on many workers and the legal liability attendant to governing positions at credit unions, it is increasingly difficult to attract and maintain such individuals. Rather than needlessly discourage volunteer participation through artificial constraints, the Federal Credit Union Act should encourage such involvement by allowing volunteers to recoup wages they would otherwise forfeit by participating in credit union affairs.

Whether or not a volunteer attends a training session or conference is sometimes determined by whether or not that volunteer will have to miss work and not be paid. I've seen it happen in my own credit union, and my board is comprised of GM employees and retirees. I can imagine this would have an even more substantial impact on boards where the volunteers are not making the income my volunteers do.

4. Permits credit unions to establish term limits for board members.

Amend 12 USC 1761(a) to add the following language at the end of the subsection (new language is in bold italics.)

A federal credit union may limit the number of times a board member may be reelected, as provided by its bylaws.

Explanation

Credit unions should have the right to limit the length of service of their boards of directors as a means to ensure broader representation from the membership. Credit unions, rather than the federal government, should determine term limits for board members. Providing credit unions with this right does not raise supervisory concerns and should not, therefore, be denied by the federal government.

5. Permits credit unions to lower its level of interest in loan participations.

Amend 12 USC 1757 in the following manner (new language is in bold italics.)

Provided [T]hat a credit union which originates a loan for which participation arrangements are made in accordance with this subsection shall retain an interest of at ~~10~~ ***5*** per centum of the face amount of the loan ***or other lower per centum as determined appropriate by the National Credit Union Administration Board.***

Explanation

The requirement that a federal credit union originating a loan for participation must retain a 10% interest in the loan is arbitrary and has not proven to be necessary for safety and soundness reasons. At the same time, it hinders a federal credit union's ability to meet its members credit needs through participation in loan services with other credit unions or financial institutions. Credit unions are under an obligation under the FCUA to operate in a safe and sound manner, and the National Credit Union Administration has sufficient authority under the Act's safety and soundness provisions to ensure that participation loans are structured in an appropriate manner. This amendment would facilitate the ability of a credit union to increase loan participations by

incrementally lowering the required retained interest to 5% of the loan's face value. It would also authorize the NCUA Board to set a lower standard as it deems appropriate.

6. Permits credit unions to sell wire transfers to persons in the field of membership.

Amend Section 307 of H.R. 3951, page 223, line 16 in the following manner (new language is in bold italics):

"SEC. 307. SALE OF CHECKS ***AND WIRE TRANSFER SERVICES*** TO PERSONS IN THE FIELD OF MEMBERSHIP OF THE CREDIT UNION."

Amend Section 307 of H.R. 3951, page 24, line 5 in the following manner (new language in bold italics):

"checks ***and provide wire transfer services*** for persons in the field of membership, for a fee."

Explanation

While the bill as introduced would authorize federal credit unions to cash checks for non-members within the field of membership, it should be extended to authorize federal credit unions to provide wire transfer services, as well. This would help credit unions reach the "unbanked" and "underserved" and provide an affordable and financially sound alternative to high cost payday lenders. This amendment would allow credit unions to play an important role in combating predatory lending practices.

As you know, there is a growing population of Hispanic and other individuals in this country who for one reason or another, are not able to utilize traditional financial institution services. These individuals frequently send their hard-earned pay to parents, children, brothers and sisters in Mexico or other homelands. Those who do not have access to a credit union or other financial institution must use wire services that charge outrageously high fees, up to 28% of the amount transferred in some cases, to execute the transaction.

This is a deplorable situation, which a number of credit unions would like to rectify by offering international wire transfers to individuals and legal entities within the field of membership.

Allowing credit unions to offer wire services to nonmembers will not expose credit unions or the National Credit Union Share Insurance Fund to additional risk. Credit unions using such services would be expected to comply fully with NCUA guidelines and their arrangements with vendors as well as their management of such activities would be fully subject to examiner review.

7. Permits Credit Unions to Issue Some Form of Additional or Alternative Capital.

As the Chairman of the Subcommittee knows, this issue was first raised in this subcommittee during the mark-up of the deposit insurance reform bill. An amendment was introduced, discussed, then withdrawn. While some consideration was given to reintroducing the amendment at the full committee mark-up, out of deference to the Chairman it was not. And frankly, although CUNA has a strong position regarding the concept of allowing some form of alternative capital for credit unions, our position regarding how to achieve that is evolving. We are currently in discussions with various members and staff of the Committee and are seeking a consensus on

how to best achieve this goal while maintaining certain guiding principles. The foremost of these guiding principles is that any form of alternative capital must not compromise the cooperative nature of credit unions. This capital must not give its holder any voting or control rights. Additionally, this capital must not be insured and it must therefore be at risk to the investor. In adhering to these principles, there is a great need for allowing credit unions to raise some form of alternative capital.

It is also important to dispel some of the myths opponents of this concept have been spreading. Specifically, the American Bankers Association recently wrote a letter to Chairman Oxley that included many misleading allegations about the role of alternative capital. The letter was written in anticipation of an attempted amendment on the deposit insurance reform bill and therefore includes arguments about whether the amendment would have been germane. Although we believe the amendment would have been germane if it had been offered, that is a moot issue now. But below is a copy of our letter that also address the other assertions by the ABA:

> April 16, 2002
>
> The Honorable Michael J. Oxley
> Chairman
> House Financial Services Committee
> 2129 Rayburn House Office Building
> Washington, D.C. 20515
>
> Dear Chairman Oxley:
>
> It is with regret that I am compelled to respond to the letter addressed to you on April 12, 2002, by Ed Yingling of the American Bankers Association (ABA). The letter outlines in misleading and inaccurate detail why the ABA objects to a proposed amendment by Rep. Brad Sherman to H.R. 3717, the Federal Deposit Insurance Reform Act of 2002, to be marked up by the House Financial Services Committee on April 17.
>
> Mr. Yingling's letter, unfortunately, once again demonstrates that the ABA is more worried about crushing competition than it is about establishing a record of service and trust on behalf of the banking industry. The ABA, as well as some of the other banking organizations, seems to spend more time trying to find ways to establish a monopoly than in strengthening their own members' operations. This is the same group that only recently petitioned the Federal Reserve Board for expanded powers in the real estate brokerage business. In advancing their argument, the ABA suggests that providing banks with this authority would expand "consumer choice," and that additional competition would be good for consumers and result in lower prices for these services. This is the ultimate in arrogance and hypocrisy. When these same arguments are used by other players in the financial services industry, the ABA consistently dismisses them.
>
> It is appalling that the ABA continually acts as the bully on the financial services block. Their positions are detrimental not only to others in the financial services industry, whether it be the realtors, insurance agents, mutual funds and securities industries, or credit unions, but most importantly, to the consumers of America. Ultimately, the monopolistic practices advocated on behalf of the banking industry by the ABA result in fewer choices and higher prices for the consumers of America.
>
> With respect to the ABA letter of April 12, the following will set the record straight regarding the proposed Sherman amendment:

ABA Assertion: the Sherman amendment "has nothing to do with deposit insurance reform" and is "non-germane" to the bill.

CUNA Response: the role of alternative capital is clearly germane to the proposed bill, as it directly amends a provision of the Federal Credit Union Act that pertains to the National Credit Union Share Insurance Fund (NCUSIF). In addition:

1. The bill already has a number of significant items not related to the pricing of insurance: additional allowable investments; coverage increases; merging BIF and SAIF; and Deposit Insurance Fund (DIF) restoration plans.

2. The replacement of the fixed Designated Reserve Ratio (DRR) with a Reserve Range is not only a pricing issue. It is also a safety and soundness issue in that the FDIC Board is to determine the DRR within a range of 1.15% and 1.4% based on the Board's assessment of "(1) present and future risk of losses to the deposit insurance fund;" and "(2) economic conditions." The NCUSIF Board already has the authority to set a normal operating level within the range of 1.2% to 1.5%. The NCUA could more precisely estimate "present and future losses to the fund" if credit unions had access to additional forms of capital.

3. In a similar vein, Section 8 "Requirements Applicable to the Risk-Based Assessment System" could very easily include the creation of additional capital to allow credit unions to minimize risk to the share insurance fund, and for NCUA to more accurately assess that risk.

ABA Assertion: Allowing credit unions other than low-income credit unions to access additional forms of capital moves away from the reliance on member owned equity, allowing credit unions to issue "ownership interests" to nonmembers, with the concomitant corporate governance issues of voting rights, board composition, etc.

CUNA Response: Credit unions are emphatically <u>not</u> seeking the ability to issue equity to anyone other than members. More specifically:

1. Credit unions seek the ability to issue non-voting debt instruments to investors in a way that would not dilute the cooperative ownership structure of credit unions.

2. These debt instruments would be subordinate to the share insurance fund and thus provide additional protection to the NCUSIF. They would therefore be counted as part of a credit union's capital base for purposes of prompt corrective action (PCA) rules, which are designed to minimize losses to the share insurance fund. Without access to such funds, well-run credit unions of various types and sizes may at times be unable to accept normal, healthy growth because of PCA rules. Access to additional sources of protection for the share insurance fund would not constrain growth to the sometimes slow accumulation of retained earnings.

3. These debt instruments would confer no voting or control rights to the holders.

4. To the extent credit unions may wish to issue new forms of equity to their members, they would be structured in such a way as <u>not</u> to violate the one-member, one-vote nature of credit union governance. Either an equal amount of equity could be required of all members, or special, nonvoting equity certificates could be sold to those members wishing to purchase them.

ABA Assertion: The amendment may have a negative impact on the ability of low-income credit unions to attract capital. The amendment, they say, would force these low-income credit unions to compete with other credit unions for the "pool" of capital currently available to such low-income institutions.

CUNA Response: The truth of the matter is that low-income credit unions obtain their secondary capital from an entirely different "pool" of investors from that which other credit unions would tap. More specifically:

1. Investors that provide low-income credit unions with secondary capital generally fall into one of two categories: those attempting to fulfill a social mission, and those trying to comply with regulations such as CRA requirements. The former group includes charitable trusts, foundations, and faith-based organizations. The latter are primarily banks attempting to meet CRA requirements.

2. Clearly, neither of these two groups would substitute their secondary capital investments in low-income credit unions for investments in some other type of credit union. Doing so would not help them accomplish their social or regulatory goals.

3. Investors in the subordinated debt issues of mainstream credit unions would likely be those seeking attractive market returns on investments based on their analysis of the financial condition of the issuing credit union.

ABA Assertion: The ABA asserts that Congress, in enacting the Credit Union Membership Access Act, specifically prohibited credit unions from issuing capital stock and relying on anything other than retained earnings.

CUNA Response: The ABA inaccurately portrays the issue of secondary capital for credit unions that are not low-income as one that Congress fully considered during its deliberations of the Credit Union Membership Access Act in 1998 and rejected. This is simply false. As the legislative history of the CUMAA indicates, Congress did not focus on the authority for natural person credit unions that are not low-income to issue secondary capital.

1. The ABA points to a single provision in a Senate Banking Committee report [Rept. No. 105-193, page 12] as proof that Congress "specifically reinforced its view" that credit unions may not issue capital stock. The language cited, which is in the Federal Credit Union Act, is taken out of context to distort its relevance. Only when read with the previous subsection is the intent of this language clear (12 USC 1790d(b)(1)(A);(B)). Under that language, Congress directed the NCUA Board to develop a PCA system that was comparable to Section 38 of the FDIC Act, while taking into account that, at the time CUMAA was enacted (as now) credit unions did not issue capital stock and their only method of building net worth is through retained earnings. When read as Congress intended, it is clear that the language cited is descriptive and not prohibitive. Had Congress intended to prohibit secondary capital for credit unions it would have included a clear directive to this effect in the statute.

2. The ABA also erroneously states that the same safety and soundness rules that apply to credit unions apply to banks. In fact, credit union PCA requirements are more stringent as credit unions are the only federally regulated financial institutions that have net worth levels, such as well-capitalized and adequately capitalized, specifically delineated in the statute. These levels are higher than the capital requirements imposed by regulation on banks.

In summary, the ABA has once again demonstrated that it will automatically oppose attempts by others to improve service to the consumer, and will use misleading and inaccurate information to o so. The Sherman amendment is not only germane to deposit insurance, it would strengthen what is already an incredibly safe fund for credit unions, while enabling credit union members to reap the benefit of even greater service.

Sincerely,

Daniel A. Mica
President & CEO

cc: Members of the House Financial Services Committee

I believe this letter adequately dispels the ABA's misinformation campaign. Let me repeat: credit unions must have the ability to build additional capital in a way that does not dilute the cooperative ownership and governance structure of credit unions. This additional capital should be subordinated to credit unions' share insurance fund, so that credit unions have the financial base to offer these services to adjust to fluctuating economic conditions. Structured properly, giving credit unions this ability will in fact provide an additional buffer to the NCUSIF, and make a strong fund even stronger. We continue to work on an appropriate approach that will accomplish these purposes and seek advice and guidance from members of the subcommittee.

Conclusion

In conclusion, CUNA is grateful and pleased that H.R. 3951 includes several provisions that will significantly increase the effectiveness of credit unions in serving their members. And while we strongly support this bill, we urge the Subcommittee to support our efforts to include the additional provisions we described in this testimony. With these additions, we are confident that credit unions will be willing to participate in a strong grassroots effort to help H.R. 3951 become the law of our land.